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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/616,870	07/14/2000	Wallace J. Beaudry	8115-12394A-PCT US DIV2	6042
26308	7590	06/02/2004	EXAMINER LEWIS, KIM M	
RYAN KROMHOLZ & MANION, S.C. POST OFFICE BOX 26618 MILWAUKEE, WI 53226			ART UNIT PAPER NUMBER 3743	

DATE MAILED: 06/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No. 09/616,870	Applicant(s) BEAUDRY, WALLACE J.	
Examiner Kim M. Lewis	Art Unit 3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 08 March 2004.
- 2a) This action is **FINAL**.
- 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 33-35, 43-46, 106-117, 126 and 139-160 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 33-35, 43-46, 106-117, 126 and 139-146 is/are allowed.
- 6) Claim(s) 147, 151 and 155 is/are rejected.
- 7) Claim(s) 148-150, 152-154 and 156-160 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 3/15/04.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: Detailed Action.

DETAILED ACTION

Response to Amendment

1. The amendment filed on 3/8/04 has been received and made of record. As requested, claims 1-32, 36-42, 47-105, 118-125, 127-138 have been canceled and claims 139-160 have been added.
2. Claims 33-35, 43-46, 106-117, 126, 139-160 are pending.

Allowable Subject Matter

3. Claims 33-35, 43-46, 106-117, 12, 139-146 are allowed.
4. Claims 148-150, 152-154 and 156-160 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 147 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,628,724 (“DeBusk et al.”).
7. As regards claim 147, DeBusk et al. anticipate the invention as presently claimed. More specifically, DeBusk et al. discloses a wound dressing and delivery

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system which reads on applicant's invention in that it comprises a first section (26), a second section (24) constructed from polyethylene (elastomeric material), a third section (26), the first section coupled to the second section and the second section coupled to the third section. Additionally disclosed is that the first and third sections are laminated materials comprising at least a first layer. The first layer including a first side, a predetermined portion of the first side having an adhesive coating (28), the second layer comprising an adhesive material (28), and wherein the second section includes a first margin and a second margin, at least a portion of the first margin being located between the first side of the first layer and the second layer of the first section, and wherein at least a portion of the second margin is located between the first side of the first layer and the second layer of the third section.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

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4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
10. Claims 151 and 155 rejected under 35 U.S.C. 103(a) as being unpatentable over DeBusk et al.

As regards claim 151, DeBusk et al. disclose all features of the claim as discussed above in the rejection of claim 147. DeBusk et al., however, fail to teach the first and third portions comprise elastic material. However, it has been held that the selection of a material based upon its suitability for the intended use is a design consideration within the level of ordinary skill in the art. *In re Leshin*, 227 F.2d 197, 125 USPQ 416 (CCPA 1960).

As such, it would have been an obvious design choice to construct what the examiner labels as the first and third sections of the DeBusk et al. based upon the intended use of the device.

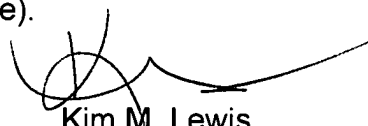
As regards claim 155, the second layer of the second section comprises a first side and a second side, the second side is **capable** of contacting a wound.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim M. Lewis whose telephone number is 703.308.1191. The examiner can normally be reached on Mondays to Thursdays from 5:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A. Bennett can be reached on 703.308.0101. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kim M. Lewis
Primary Examiner
Art Unit 3743

kml
June 1, 2004